IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

Bail Appl..No. 4641 of 2007(O)

CRIME NO.68 OF 2005 OF KODUMON POLICE STATION

: PETITIONER/ACCUSED:

OMANAKUTTAN, AGED 44 YEARS,
S/O. NARAYAN, PALACHUVATTIL HOUSE,
THALAYARA, ANGADIKAL.

BY ADV. SRI.M.T.SURESHKUMAR

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4641 of 2007

Dated this the 1st day of August, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. He was allegedly found to be in possession of 565 litres of wash. He was not arrested at the crime stage. Investigation is complete. Final report has already been filed. Committal proceedings has been registered. The petitioner has received summons from the court to appear on 3.8.07. The petitioner apprehends that if and when he appears before the learned Magistrate, his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. The learned Magistrate is bound to consider the application for bail on merits, in accordance with law and expeditiously in the light of the dictum in **Sukumari v. State of Kerala** [2001(1) K.L.T 22] and **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

2. The application is opposed by the learned Public Prosecutor. It is unnecessary to consider the various specific grounds of opposition. I am of opinion that it is for the petitioner to appear

before the learned Magistrate and seek regular bail in the ordinary course. I have no reason to assume that the learned Magistrate would not consider such application for bail on merits, in accordance with law and expeditiously.

This application for anticipatory bail is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law in the light of the decisions referred above and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-